

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

In re:

Case No. 02-14899-8P3  
Chapter 13

RUSSELL GENE WALDORF,  
JOYCE WALDORF

Debtor. \_\_\_\_\_/

**ORDER ON DEBTOR'S OBJECTION TO  
APPLICATION FOR ALLOWANCE OF  
ATTORNEY'S FEES FILED BY CAROL  
LAWSON (Doc. No. 136)  
DEBTORS' MOTION TO EXAMINE  
TRANSACTIONS WITH CAROL LAWSON  
(Doc. No. 137)  
AMENDED APPLICATIONS FOR  
ALLOWANCE OF ATTORNEY'S FEES  
(Doc. Nos. 140 & 155))**

THIS CAUSE came on for hearing after notice to all parties of interest upon the Debtors' Objection to Application for Allowance of Attorney's Fees filed by Carol Lawson (Doc. No. 136); Debtors' Motion to Examine Transactions with Carol Lawson (Doc. No. 137); and Amended Application for Allowance of Attorney's Fees (Doc. No. 140) filed by Carol Lawson, Esquire (Ms. Lawson). The Objection to Application for Allowance of Attorney's Fees and Motion to Examine Transactions with Carol Lawson are filed by Russell Gene Waldorf and Joyce Waldorf (Debtors) in the above-captioned Chapter 13 case. The Debtors seek a return of the attorney's fees they paid Ms. Lawson.

The record reveals that on July 31, 2002, the Debtors filed a voluntary Petition for Relief under Chapter 7. At the time of filing the Petition the Debtors were represented by Jeffrey M. Johnston, attorney at law. On December 19, 2002, the Chapter 7 case was converted to a Chapter 13 case. On July 21, 2003, the Confirmation of the Debtor's Chapter 13 Plan was denied and the case was converted back to a Chapter 7 case. Thereafter, the Debtors engaged the services of Ms. Lawson to assist them to convert their case back to a Chapter 13 case. The Court granted Debtors' Motion for Reconsideration and reinstated the Chapter 13 case on July 28, 2003. On September 5, 2003, a Stipulation for Substitution of Counsel for Debtors was filed with the Court

executed by Carol A. Lawson and Jeffrey M. Johnston.

Before the conversion back to a Chapter 13 case, the Debtors paid Ms. Lawson a retainer of \$1,000. Ms. Lawson failed to file a disclosure of compensation with respect to the \$1,000 as required by Section 329 and Rule 2016 (b) of the Bankruptcy Code. In February 2004, the Debtors paid another \$2,000 to Ms. Lawson in order to secure representation in their objection to the claim of the IRS. Again, Ms. Lawson failed to file a disclosure of compensation with the Court.

11 U.S.C. §329 of the Bankruptcy Code requires attorneys dealing with Debtors to "file with the court a statement of the compensation paid or agreed to be paid." This Court has the discretion to order the disgorgement of some or all attorney's fees when an attorney fails to meet Section 329 requirements. In re Lewis, 113 F.3d 1040, 1045 (9th Cir. 1997). The disclosure rules apply even when the failure to disclose is due to negligence or inadvertence. In re Park-Helena Corp., 63 F.3d 877, 881 (9th Cir. 1995). In Bankruptcy cases, debtor's counsel has a serious responsibility to disclose any payments of fees from the debtor or a third party because disclosure is crucial to the administration of justice. In re Anderson, 253 B.R. 14, 22 (Bankr. E.D. Mich. 2000).

Based on the foregoing, this Court is satisfied that Ms. Lawson should be ordered to disgorge a portion of attorney fees paid to her for failure to disclosed the receipt of the \$3,000 attorney fees at the time as required by Section 329 of the Bankruptcy Court.

**THE FEE APPLICATIONS AND  
OBJECTION TO FEE APPLICATION**

On January 10, 2005, Ms. Lawson filed her Amended Application for Allowance of Attorney Fees (Doc. No. 140). In her application, Ms. Lawson seeks attorney fees in the amount of \$2,500.00 for representation in the Chapter 13 case and \$2,000.00 for representation in the controversy with the IRS claim, for a total of \$4,500.00 in attorney fees. The Application further reflects that Ms. Lawson was initially paid \$1,000.00 for the Chapter 13 case and later \$2,000.00 for the IRS claim, leaving a balance of \$1,500.00 to be paid through the Chapter 13 Plan.

On January 5, 2005, Debtors filed an Objection to Application for Allowance of Attorney's Fees filed by Carol Lawson (Doc. No. 136) contending that Ms. Lawson accepted attorney's fees

in the amount of \$2,000.00 post filing without leave of this Court and without disclosure to this Court, as well as that the services provided to the Debtors were inadequate. After the hearing on the three matters under consideration, Ms. Lawson filed a Second Amended Application for Allowance of Attorney Fees (Doc. No. 155) on January 27, 2005, reflecting a request for the same amounts in attorney's fees for representation as outlined above, as well as furnishing the Court with a copy of the contract between her and the Debtors for services to be performed.

Since Ms. Lawson did perform some legal services to the Debtor and it would be unfair to deny Ms. Lawson of all compensation, this Court finds that it is appropriate to award \$1,500 to Ms. Lawson for her services rendered in representation of the Debtors in both the Chapter 13 case and the controversy with the IRS. Thus, Ms. Lawson shall be required to disgorge \$1,500.00 in fees to the Debtors for failure to disclose fees received as required by 11 U.S.C. §329.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Debtors' Motion to Examine Transactions with Carol Lawson (Doc. No. 137) be, and the same is hereby, granted in part and denied in part. It is further

ORDERED, ADJUDGED AND DECREED that Carol Lawson's Applications for Allowance of Attorney Fees (Doc. Nos. 140 and 155) be, and the same are hereby, approved in part and disapproved in part. A reasonable fee for all services rendered by the attorney for the Debtors during the applicable time period shall be \$1,500.00. It is further

ORDERED, ADJUDGED AND DECREED that Debtor's Objection to Application for Allowance of Attorney's Fees Filed by Carol Lawson (Doc. No. 136) be, and the same is hereby, sustained in part and overruled in part. It is further

ORDERED, ADJUDGED AND DECREED that Carol Lawson, Esquire, is directed to disgorge and turn over to the Debtor the sum of \$1,500.00 received from the Debtor for services in this case within twenty (20) days from the entry of this Order and file a written statement with this Court that she has done so. In the event that Carol Lawson, Esquire, failed to timely comply with this Order, this Court will consider further sanctions as may be appropriate.

DONE AND ORDERED at Tampa, Florida,  
on February 4, 2005,

/s/ Alexander L. Paskay  
ALEXANDER L. PASKAY  
U.S. BANKRUPTCY JUDGE